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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th September 2007

No.10876-1i/1(BH-I)-15/2007/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 14th June 2007 in I.D. Case No. 251/1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Water and Power Consultancy Services Limited, New Delhi and its workman Shri Kishore Kumar Mishra was referred for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE NO. 251 OF 1995

Dated the 14th June 2007

Present :

Shri S.K.Mohapatra, O.S.J.S. (Jr. Br.)
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

The Management of
of M/s. Water and Power
Consultancy Services India Limited,
New Delhi. First-party—Management
And
Its workman
Sri Kishore Kumar Mishra, Second-party—Workman

Appearances :

Shri S. Eheti, Advocate	.. For First Party —Management
Shri B. Mukharji, Advocate	.. Second Party—Workman

AWARD

The Government of Orissa, Labour & Employment Department has referred the present dispute between the Management of M/s. Water and Power Consultancy Services Limited, New Delhi and its workman Shri Kishore Kumar Mishra under Notification No.7559/LE., dated the 27th June 1995 vide Memo No. 10889(5)/LE., dated the 23rd August 1995 for adjudication by this Court.

2. The terms of reference by the State Government is as follows:—

“Whether the action of the Senior Manager (P & H.R.D.), Water and Power Consultancy Services India Limited (WAPCOS), New Delhi in terminating the services of Shri Kishore Kumar Mishra, Messenger with effect from 31st August 1991 is legal and/or justified ? If not, to what relief he is entitled ?”

3. Shorn of all unnecessary details, the case of the workman in brief is as follows:—

The workman was appointed as Messenger for six months with effect from 29th October 1988 in the field duty of Water and Power Consultancy Services India Limited (hereinafter referred to as the Management) and was attached to the office of the Deputy Chief Engineer of the said Management in connection with their project work at Subarnarekha Irrigation Project vide appointment letter No. 1. The period of appointed was extended upto 31st December 1989 vide order Ext.2. As the project was going to be completed, the Management terminated the services of the workman with effect from 31st January 1990 vide order Ext.4. The workman was again appointed as Messenger-cum-Chowkidar for Subarnarekha Irrigation Project work at Baripada for a period of six months with effect from 1st June 1990 vide order under Ext.5. Vide order Ext.6 the service of the workman was extended up to 30th June 1991. Since the field unit of the Management at Baripada was closing, the services of the workman was terminated with effect from 31st August 1991 vide order Ext.7. Since the Management continued its work at Baripada till the end of December, 1991 and one co-worker who was junior to the workman continued to work under the Management, the workman felt aggrieved. The Management had not complied with the provision under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act) while terminating the services of the workman. The workman raised an industrial dispute for which the District Labour Officer, Mayurbhanj, Baripada started a conciliation proceeding in which the Management suggested to re-employ the workman in its project at any place in India on contract basis without any benefits either financial or otherwise for his past services but this was not agreed to by the workman and therefore, the present reference was made by the Government of Orissa to this Court for adjudication and hence this case.

4. The Management in its written statement has challenged the maintainability of the case and has contended that the services of the workman was purely temporary and was confined to the duration of the project undertaking by the Management and therefore, when the workman had been engaged purely on *ad hoc* basis for limited period his service was co-terminus with the project i.e. Subarnarekha Irrigation Project Phase I at Baripada. On 1st August 1990 the workman was again appointed on a fresh contract purely on contract basis in relation to Phase II of Subarnarekha Irrigation Project and the project continued up to 31st August 1991. Since there was no work left for the workman and his contract period was completed and that on completion of Phase II of Subarnarekha Irrigation Project the Management closed its office, most of the staff engaged in such time bound project were relieved from their respective service with effect from 31st August 1991. The Management Company finally closed its office on 30th November 1991. Since the Project was completed and the workman had been appointed on contract basis it can never be said that the workman had been retrenched from the service because his work automatically ceased on the day of the closure of the project. Therefore, the provision under Section 25-F of the I.D. Act is not applicable in the case of the present workman. During the conciliation proceeding the workman had been offered work at Upper Kolab Irrigation Project, Orissa in which the Management Company had taken up certain consultancy work but the workman refused the said offer to work at Upper Kolab although the Management was ready to accommodate him in any of its project in India on contract basis. The initial appointment of the workman was against a specific project and for a specific duration and the workman was fully aware of the condition of service and therefore the workman could not claim regular service under the Management in the guise of reinstatement in service. On these averments the Management has sought for rejection of the claim of the workman.

5. On the above pleadings of the parties, the following issues have been framed for determination.

ISSUES

- (i) Whether the action of the first-party—Management in terminating the services of the second-party—workman with effect from 31st August 1991 is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?

6. Issue No. (i):— The workman was first appointed under office order No. 605/1988 vide Ext. 1 with effect from 29th October 1988 for a period of six months on *ad hoc* basis and it has been specifically mentioned in Ext.1 that the appointment was purely temporary and was terminable without any notice. Such service of the workman

was extended up to 31st December 1989 on the same terms and conditions. Thereafter the service of the workman was terminated with effect from 31st December 1990 under Ext.4 as because the Subarnarekha Irrigation Project, Phase-I, Baripada was going to be completed. A plain reading of Exts.1 and 2 and Ext.4 make it very clear that the services of the workman was contractual in nature and it terminated with the termination of the project work which the Management Company had undertaken and therefore, the provision under Section 2(oo)(bb) of the I.D Act comes into play to exempt the termination of the service from the term ‘retrenchment’ as defined under Section 2(oo) of the I.D. Act. When the nature of work of the workman was contractual in nature and was co-terminus with the project undertaken by the Management Company, it can never be said that the workman had been retrenched from service and therefore the provision under Section 25-F of the I.D. Act does not apply to the case of the present workman.

So far as the other phase of service of the workman is concerned the workman was again appointed for a period of six months with effect from 1st June 1990 under Ext.5 and the said appointment was extended upto 30th June 1991 under Ext.6 and thereafter on completion of the project work the service of the workman was terminated with effect from 31st August 1991. Un-doubtedly the workman was in continuous service under the Management within the meaning of Section 25-B(2)(a)(ii) of the I.D. Act as because the workman had rendered more than 240 days of service. Now the question arises as to whether the termination of service of the workman is retrenchment within the meaning of Section 2(oo) of the I.D. Act. The appointment of the workman was under Ext.5. The relevant portion of Ext.5 reads as follows:—

“OFFICE ORDER No.548/1990

Shri K.K. Mishra is, hereby, appointed as Messenger-cum-Chowkidar for Subarnarekha Irrigation Project, Baripada on *ad hoc* basis in the pay scale of 196-3-220-EB-3-232-(pre-revised) for a period of six months from 1st June 1990.

The appointment as Messenger-cum-Chowkidar is purely on temporary basis and terminable at any time without assigning any reason thereof. He shall have no claim for regular service in WAPCOS or seniority under any circumstances.

For WATER AND POWER CONSULTANCY
SERVICES (INDIA) LIMITED,
D.B. MATHUR
Deputy Manager (P.I)”

The services of the workman was extended up to 30th June 1991 vide Ext.6 on the same terms and conditions of Ext.5. The service of the workman was terminated vide order Ext.7. The relevant portion of Ext.6 reads as follows:—

"OFFICE OF THE ORDER No.893/1990

In continuation of Office Order No. 548/1990 dated the 20th July 1990, the term of appointment of Shri K.K. Mishra Messenger working at Subarnarekha Irrigation Project, Baripada is, hereby, extended up to 30th June 1991 on the existing terms and conditions.

For WATER AND POWER CONSULTANCY
SERVICES (INDIA) LIMITED,
D.B. MATHUR
Deputy Manager (P.I)"

A plain reading of Exts.5 to 7 make it clear that the service of the workman was co-terminus with the completion of the project work of the Management Company and was purely contractual in nature. Therefore, form the very nature of appointment the service of the workman could definitely come under the exception provided under Section 2(oo)(bb) of the I.D Act. Since the project came to an end as specifically mentioned in Ext.7, there was no question for the Management Company to renew the contract of employment of the workman. Therefore, the termination of services of the workman under Ext.7 would not be a retrenchment within the meaning of Section 2(oo) of the I.D Act and consequently the provision under Section 25-F of the I.D Act is not attracted. In the instant case the Management is a Public Limited Company of the Government of India. For a particular limited purpose for doing some work for Subarnarekha Irrigation Project the Management Company had employed the workman for a limited period on *ad hoc* basis. Therefore, the workman had no right whatsoever to be regularized in service. Further more in the decision SECRETARY, STATE OF KARNATAKA AND OTHERS Vrs.UMADEVI (3) AND OTHERS reported in (2006) 4 SCC 1 it has been held by the Constitutional Bench of the Hon'ble Apex Court to the effect that :—

"Service Law-Causal Labour/Temporary Employee-Status and rights of – Unequal bargaining power-Effet-Held such employees do not have any right to regular or permanent public employment–Further, temporary, contractual, casual, *ad hoc* or daily-wage public employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequence flowing from it-Reasons for, discussed in detail-Labour Law."(Placitum)

In the same judgement the Hon'ble Supreme Court have further over ruled all past precedents which ran counter to the principles laid down as law in the case SECRETARY, STATE OF KARNATAKA AND OTHERS Vrs.UMADEVI (3) AND OTHERS (Supra). Consequently the action of the Senior Manger (P&H.R.D.) Water and Power Consultancy Services Private Limited (WAPCOS), New Delhi in terminating the services of the workman namely Shri Kishore Kumar Mishra, Messenger with effect from 31st August 1991 is legal and justified. The issue No. (i) is answered accordingly.

7. Issue No. (ii) :— In view of my answer to Issue No. (i) the workman is not entitled to any relief whatsoever under any provisions of the I.D. Act. The Issue No. (ii) is answered accordingly.

The reference is answered accordingly.

Dictated and corrected by me

S.K. Mohapatra

Dt. 14-06-2007

Presiding Officer,
Labour Court,
Bhubaneswar.

S.K. Mohapatra

Dt. 14-06-2007

Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor

N.C.RAY

Under-Secretary to Government